

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

OCTOBER TERM, 1927

No. 4668.

471

UNITED STATES OF AMERICA EX REL. SADIE
HOLMES FINLEY, APPELLANT,

vs.

FRANK T. HINES, DIRECTOR OF THE VETERANS'
BUREAU.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED NOVEMBER 14, 1927.

PRINTED DECEMBER 28, 1927.

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Court of Appeals of the District of Columbia

No. 4668.

U. S. of A. ex Rel. SADIE HOLMES FINLEY, Appellant,

vs.

FRANK T. HINES, Director, &c.

a Supreme Court of the District of Columbia.

At Law.

No. 72443.

UNITED STATES OF AMERICA ex Rel. SADIE HOLMES FINLEY,
Petitioner,

vs.

GENERAL FRANK T. HINES, Director of the Veterans'
Bureau, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Petition for a Writ of Mandamus.

Filed December 18, 1926.

In the Supreme Court of the District of Columbia.

Law. No. 72443.

UNITED STATES OF AMERICA ex Rel. SADIE HOLMES FINLEY,
Petitioner,

vs.

GENERAL FRANK T. HINES, Director of the Veterans'
Bureau, Respondent.

Your petitioner respectfully represents to this Honorable Court that she is a citizen of the United States, residing in the District of Columbia, and has resided in the District of Columbia since February 1924. She files this petition in her own right.

2. That heretofore, to wit, on the 23rd day of March, 1917, your petitioner was united in the bonds of matrimony with Harold Lancelot Finley, and she lived with the said Harold Lancelot Finley until the date of his death, which death occurred on April 26, 1922, at the Walter Reed Hospital, in the District of Columbia.

3. The deceased, Harold Lancelot Finley, was at the date of his marriage an officer in the United States Army, holding the rank of Second Lieutenant. Thereafter he was advanced to the rank of Major, in the Quartermaster Corps of the Army, and after the close of the World War he continued in the Army with the rank of Captain, being stationed at Camp Grant, Illinois.

4. That while serving in the United States Army,
2 he applied to the Bureau of War Risk Insurance, Division of Military and Naval Insurance, Treasury Department, on, to wit, the 2nd day of February, 1918, under the provisions of the Act of Congress approved October 6, 1917, for insurance upon his life in the total sum of Ten thousand (\$10,000.00) Dollars, payable in the event of total disability to the insured, or in the event of death to his wife, your petitioner.

And that thereafter there was issued to him a policy of insurance or certificate issued by the War Risk Insurance Bureau of the Treasury Department, effective as of Feb-

ruary 2nd, 1918, under the terms of which the United States of America promised and agreed to pay to the insured Harold Lancelot Finley in case of total disability the sum of Fifty-seven and 50/100 (\$57.50) Dollars per month in monthly installments, and in case of his death, to pay to your petitioner the said sum of \$57.50, until the full sum of Ten Thousand (\$10,000.00) Dollars with the interest or accumulated earnings, was so paid to the insured or to your petitioner in case of death, all in consideration of certain premiums or rates to be paid to the United States Government by the insured, and all of which were paid from the date of the issuance of said policy up to and including April 1, 1920.

It was further agreed and understood between the insured and the Government of the United States of America that no premiums were due or payable by the insured or by any other person for him after the date when the insured should become permanently and totally disabled, or from the date of death.

Your petitioner says that the right and privilege was given to the deceased insured to change or convert
3 the form of insurance from term, or monthly payment insurance, to an endowment or life policy, and at the request of your petitioner, the insured did, during the month of March, 1920, request of the Director of the Bureau of War Risk Insurance to discontinue his term insurance for the purpose of applying to the Bureau for the endowment insurance; but, in fact, although not at that time known to the insured he was suffering with a malignant disease known to medical science as a cancer of the stomach, and was at that time in fact seriously ill, which disease and condition thereafter resulted in his being sent to the Government Hospital at Camp Grant, Illinois, and thereafter transferred from that hospital to the Walter Reed General Hospital at Washington, D. C., where he died as a result of this disease.

5. Your petitioner says that after the certificate, the subject of this controversy, became effective and in full and binding force and effect, Congress passed another Act further regulating and controlling and extending certain powers, and further delegating special powers with reference to the insurance issued by the United States of America, known as the War Risk Insurance, which Act was

passed on, to wit, August 9, 1921, and entitled: "An Act to establish a Veterans' Bureau and to improve the facilities and service of such Bureau and further to amend and modify the War Risk Insurance Act."

In Section 1 of said Act as so amended, the act provides, among other things, thus:

"The powers and duties pertaining to the office of the Director of the Bureau of War Risk Insurance now in the Treasury Department are hereby transferred to the Director, subject to the general direction of the President, and the said office of the Director of the Bureau of War Risk Insurance is hereby abolished."

Section 2 of said Act, provides thus:

"The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes and shall decide all questions arising under this Act except as otherwise provided herein."

Section 6 of said Act, among other things, provides thus:

"The director shall establish a central office in the District of Columbia, and not more than fourteen regional offices and such suboffices, not exceeding one hundred and forty in number, within the territory of the United States and its outlying possessions as may be deemed necessary by him and in the best interests of the work committed to the Veterans' Bureau and to carry out the purposes of this Act. Such regional offices may, pending final action by the director in case of appeal, under such rules and regulations as may be prescribed by the director, exercise such powers for hearing complaints and for examining, rating, and awarding compensation claims, granting medical, surgical, dental, and hospital care, convalescent care, and necessary and reasonable after care, making insurance awards, granting vocational training, and all other matters delegated to them by the director as could be performed lawfully under this Act by the central office. The suboffices shall have such powers as may be delegated to them by the director,

except to make compensation and insurance awards and to grant vocational training.

Section 7 of said Act provides:

“The beneficiaries of the Bureau of War Risk Insurance and the Rehabilitation Division of the Federal Board for Vocational Education shall hereafter be the beneficiaries of the Veterans’ Bureau, and complete individual record of each beneficiary shall be kept by the Veterans’ Bureau.”

Section 9, among other things, provides:

“In order to standardize the character of examination, medical care, treatment, hospitalization, dispensary, and convalescent care, nursing, vocational training, and such other services as may be necessary for beneficiaries under this Act, the director shall maintain an inspection
5 service, with authority to examine all facilities and services utilized in carrying out the purpose of this Act, and for this purpose, with the approval of the President, may utilize such other Government or private agencies as may be deemed practicable and necessary.”

Your petitioner states that Colonel Charles R. Forbes was the duly qualified director of the Veterans’ Bureau under this Act during the whole of the month of April, 1922, and for some considerable time prior thereto and subsequent thereto. And as such director, Colonel Charles R. Forbes in April, 1922, acting under the power and authority vested in him by said Act, heard and considered the application of the insured, Captain Harold Lancelot Finley, for reinsurance, reinstatement, or for the payments due under the provisions of the policy issued to him, effective as of February 2, 1918, by reason of the fact that his permanent and total disability was then shown to have been in existence prior to his request for discontinuance of his certificate dated February 2nd, 1918; and after a full, complete and detailed investigation and consideration, the said director of the Veterans’ Bureau, said Colonel Charles R. Forbes, found as a fact that the insured Captain Harold Lancelot Finley was at that time permanently and totally disabled, and became permanently and totally disabled on, to wit, the 1st day of December, 1919, which action and finding

of fact on the part of the said director of the Veterans' Bureau, Colonel Charles R. Forbes, was not reviewed or reversed by any action of the President of the United States, and the said action was and became final and effective in

6 April, 1922, as of the first day of December, 1919, and which action and findings of fact entitled the insured to the full security and benefits under his certificate of insurance effective as of February 2nd, 1918.

7. Your petitioner further says that in accordance with said finding of fact and the action so taken by the director, the insured was notified on the 14th day of April, 1922, by authority of the Director, that he was entitled to the benefits and emoluments under the provisions of his policy effective February 2nd, 1918, thus:

File No. I—File No. C.

“Where Beneficiary is the Insured & Totally and Permanently Disabled.

Treasury Department, Bureau of War Risk Insurance.

Award to Beneficiary.

Mr. Harold Lancelot Finley, C-666369:

You are hereby notified that as the person to whom insurance amounting to \$10,000 was issued by the United States under the Act of October 6, 1917, you are entitled to receive payments of insurance in monthly installments of Fifty-Seven and 50/100 dollars from the 1st day of December, 1919.

Your present physical condition warrants a rating of permanent and total disability under the present schedule of ratings in force in the Bureau.

In no event, however, under existing law can this insurance be paid in any other manner than by monthly payments. No lump sum payments are permitted in the case of permanent and total disability.

Important Provision of the Act.

Sec. 28. That whoever shall obtain or receive any money, check, allotment, family allowance, compensation, or insurance under Article II, III, or IV of this Act, without be-

ing entitled thereto, with intent to defraud the United States or any person in the military or naval forces of the United States, shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or both.

If you should change your present address, the Compensation and Insurance Claims Division, Bureau of War Risk Insurance, Washington, D. C. must be immediately notified.

“By authority of the Director.

7 This 14th day of April, 1922.

LEON FRASER,

Assistant Director, in charge of Compensation and Insurance Claims Division,

(Signed) By M. W.”

C. C. Form 528.
(Rev. June, 1921.)
(A true copy.)

Your petitioner says that the insured was paid the sums due him under the provisions of said certificate and said finding and award by the Director Colonel Charles R. Forbes, from the 1st day of December, 1919, to the 30th day of April, 1922.

Petitioner states that no other act or action of any character was taken by the Bureau of War Risk Insurance or by any other person, persons, department, or bureau, during the remainder of the life of said insured.

8. Your petitioner states that after the death of the insured she received regularly each month thereafter the sum of Fifty-seven and 50/100 (\$57.50) Dollars in accordance with the terms of the policy and the findings of fact by the Director, above pleaded and set forth, from the first day of May, 1922, to the 31st day of July, 1923.

9. Your petitioner further says that the said Colonel Charles R. Forbes resigned the position of Director of the Veterans' Bureau as of February 28, 1923, and that General Frank T. Hines was appointed Director of the Veterans' Bureau in the place and stead of the said Colonel Charles R. Forbes, taking his office March 1st, 1923.

That the Director is required to pay to the insured, or in the event of his death, to the beneficiary or person entitled thereto, all payments in accordance with the awards
8 by the Director, and your petitioner states that General Frank T. Hines declines and refuses to deliver

up and pay over to your petitioner the payments due her in accordance with the award made by the Director Colonel Charles R. Forbes.

10. Your petitioner states that when she failed to receive the check covering the payment due her for the month of August, 1923, she endeavored to collect her check and has been endeavoring from said date until the present time so to do. She was advised that she was required to take the matter up with the Bureau before employing counsel or before she could proceed in the Federal Courts, and that in pursuance of said advice she did have the matter up with the Bureau, and thereafter with the American Legion who acted for her on the matter, and it was not until, to wit, May 1926, that the Director finally and definitely declined and refused to pay to your petitioner the payments to which she was entitled or any other payments. That since then, and after said final refusal and rejection, she had further conferences with the American Legion, but she is now advised and informed that Director General Frank T. Hines has definitely and positively refused to pay over to her the sums of money due her under said award, and, therefore, she is advised that her only remedy is by a Writ of Mandamus issued out of this Honorable Court.

Therefore, the premises considered, petitioner prays:

1. That a writ of Mandamus may issue out of this Honorable Court directed to the Respondent requiring him to appear in this Court and answer this petition and show cause, if any he has, why the Writ of Mandamus should not be issued against him requiring him to pay to your petitioner the sum of Fifty-seven and 50/100 (\$57.50) Dollars per month, the amount of the award fixed and determined by Colonel Charles R. Forbes, in April, 1922.

2. And that your petitioner may have such other, further and general relief as in the premises she may be found to be entitled to, and as to the Court may seem just and proper herein.

SADIE HOLMES FINLEY,
Petitioner.

W. GWYNN GARDINER,
SOUTH TRIMBLE, JR.,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

Sadie Holmes Finley being first duly sworn on oath deposes and says that she has read the above and foregoing petition for Writ of Mandamus by her subscribed, and knows the contents thereof; that the matters and things therein alleged of her own knowledge are true, and those stated upon information and belief she verily believes to be true.

SADIE HOLMES FINLEY.

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 15th day of December, A. D. 1926.

[NOTARIAL SEAL.]

EVA W. SAMPSON,
Notary Public.

10

Rule to Show Cause.

Filed December 18, 1926.

* * * * *

Upon consideration of the petition in the above entitled cause, it is by the Court this 18th day of December, A. D. 1926

Ordered, That the said respondent show cause before this Court on Friday, January 7th, 1927, at ten o'clock A. M., or as soon thereafter as counsel can be heard, if any he has, why a Writ of Mandamus should not be issued against him, requiring him to pay to said petitioner the installments due upon the insurance policy issued by the United States on the life of Harold Lancelot Finley.

Provided a copy of this rule be served on said respondent not later than the 22d day of December 1926.

By the Court.

WALTER I. McCOY,
Chief Justice.

Marshal's Return.

Served a copy of the within rule on Gen. Frank T. Hines Dir. of Vet. Bureau Dec. 20, 1926 personally:

EDGAR C. SNYDER,
U. S. Marshal in and for the Dist. of Columbia,
By W. J. ROBERTS,
Deputy U. S. Marshal.

11 *Return to Rule to Show Cause and Answer to Petition
for Writ of Mandamus.*

Filed January 28, 1927.

• • • • •

Now comes the defendant, Frank T. Hines, Director of the United States Veterans' Bureau, now and at all times saving and reserving to himself all exceptions to the imperfections, uncertainties and defects in the petition for writ of mandamus filed herein, and reserving unto himself the benefit of the lack of jurisdiction of the Court appearing on the face of said petition, to grant the relief prayed for and the lack of jurisdiction of the Court to direct him to perform the act in question, and relying upon the same as if demurrer could have been specifically interposed, for return to the rule to show cause and for answer to said petition, or so much thereof as is material, says:

2, 3 and 4. Respondent admits the allegations of Paragraphs Two, Three and Four of said petition, except respondent denies that Harold Lancelot Finley, during the month of March, 1920, or at any other time, requested the Director of the Bureau of War Risk Insurance, to discontinue his \$10,000 War Risk Term Insurance contract for the purpose of applying to the Bureau for the endowment insurance, and except respondent further denies that Harold Lancelot Finley was in fact suffering from a malignant disease known to medical science as cancer of the stomach in March, 1920.

Further answering Paragraph Four of said petition, respondent says that the said Harold Lancelot Finley on
March 16, 1920, duly cancelled his said \$10,000 War
12 Risk Term Insurance in the following language:

“The provisions of the Act of Congress, approved October 6, 1917, so far as it relates to insurance, have been explained to me, and I understand my rights and privileges under the Act, but I desire to cancel my War Risk Insurance; amount of original application \$10,000, effective October 1, 1917. Beneficiary designated on application for insurance ‘Wife’ ”.

5. Answering paragraph Five, respondent says that with the exception of the last paragraph thereof, said para-

graph consists of excerpts from Acts of Congress, which have been either altered, amended, repealed or brought forward and reenacted in the World War Veterans' Act of 1924, as amended, and therefore being matters of law, he is not required to answer the same.

Answering the last paragraph of paragraph Five, respondent admits that Charles R. Forbes was the duly qualified director of the United States Veterans' Bureau during the whole of the month of April, 1922, and for some time prior and subsequent thereto; respondent admits that the said Charles R. Forbes in April, 1922, heard and considered the application of the said Harold Lancelot Finley for payments due under the provisions of the contract of insurance entered into between him and the United States on February 2, 1918, by reason of the fact that the said Harold Lancelot Finley claimed that his then total and permanent disability was shown to have been in existence prior to the cancellation of his insurance contract on March 16, 1920; respondent denies that a full, complete and detailed investigation and consideration was made by the then Director of the United States Veterans' Bureau, the said Charles R.

Forbes, but avers the fact to be that through a manifest error on the face of the proceedings then pending before the said Charles R. Forbes, and without sufficient evidence of the existence of total and permanent disability, as of December 1, 1919, the said Charles R. Forbes did allow the claim of total and permanent disability from that date.

Respondent further avers that on December 18, 1921, the said Harold Lancelot Finley applied for reinstatement of his said \$10,000 War Risk Term insurance; that he was at that time a patient at Walter Reed Hospital suffering from carcinoma and the United States Veterans' Bureau declined to reinstate his said War Risk Insurance for the reason that he was then permanently and totally disabled; that after the application of the said Harold Lancelot Finley for reinstatement of said insurance was rejected by the United States Veterans' Bureau, an effort was then made in his behalf to obtain a rating of permanent and total disability prior to the date of the cancellation of his insurance contract, mentioned in paragraph Four of this answer. On April 3, 1922, his claim was before the Central Office Board of Review when a rating of total and permanent dis-

ability was given him as of and from September 20, 1921; that this rating was then approved by the Central Office Board of Appeals, but three days after said approval there was inserted in the files of the United States Veterans' Bureau, the following memorandum:

“Records in file prove by affidavits unmistakably that Captain Finley was incapacitated by reason of a disability which in the advanced state was diagnosed as carcinoma of stomach. It would not be presumptuous to date P. & T. from December 1, 1919, M. F. W. OK. H. L. M. 4/7/22, OK, C. R. F.”

Respondent avers that it was on the above quoted
14 memorandum alone, entirely insufficient in law and fact, that a rating of total and permanent disability was awarded the said Harold Lancelot Finley on April 14, 1922, as of December 1, 1919, by the then Assistant Director of the United States Veterans' Bureau, Leon Fraser; that in all \$2,530.00 was paid under said award of insurance, part to the said Harold Lancelot Finley before his death on April 26, 1922, and the remainder to his widow, the petitioner herein, subsequent to his death.

Respondent admits that the finding of the said Charles R. Forbes was not reviewed or reversed by the President of the United States, but denies that the said finding became final and effective in April, 1922, as of the first day of December, 1919, for the reason heretofore mentioned and for reasons which are hereafter set out.

7 and 8. Respondent admits the allegations of Paragraphs Seven and Eight of the petition filed herein.

9. Respondent admits that the said Charles R. Forbes resigned the position of Director of the United States Veterans' Bureau on February 28, 1923, and that the present respondent was appointed Director of the said Bureau on March 1, 1923. The respondent admits that he declines to pay to petitioner any further installments under the War Risk Insurance contract involved herein.

Respondent is advised that the other allegations contained in Paragraph Nine are mere conclusions of law to which no answer is necessary.

10. Respondent admits the allegations of Paragraph Ten.

15 Answering said petition further respondent avers:

(a) That the award of War Risk Insurance made by his predecessor in office was unjust and unfair to the interests of the United States Government and that same was based on manifest error in law and in fact on the part of the said Charles R. Forbes.

(b) That the decision of respondent to discontinue further payments of insurance on July 31, 1923, was based on newly discovered material evidence, which was presented to respondent and which evidence convinced respondent that to continue payments made under the award of his predecessor in office would constitute a fraud on the United States Government for that the insured's army medical record showed that from September 25 to September 30, 1918, he had been treated for influenza; that from September 20 to October 11, 1921, he had been treated for ulcer of the stomach; that on October 16, 1921, he was admitted as a patient to Walter Reed Hospital, located in this city, where the diagnosis was changed to carcinoma, the cardiac end of the stomach, and that the true condition of insured was not disclosed until an operation was performed on him on November 8, 1921. The insured was actually on active duty at the time he cancelled his insurance on March 16, 1920, and remained actually on active duty until September 29, 1921, one year and six months after the cancellation of his said insurance contract; the only evidence in the file which would tend to show that the disability of carcinoma of the stomach existed prior to September 20, 1921, are some affidavits which were more or less general and wholly wanting in medical facts to warrant an opinion that the disability did exist in 1919, and granting that a disability did exist in 1919, the fact remains that the insured continued in active military duty until September 20, 1921, and was able to and did follow a substantially gainful occupation from March 16, 1920, to September 20, 1921. The additional evidence secured by the respondent for the review of this case also consists of the affidavits and statements of medical experts and the clinical records of the station hospital at Camp Grant, Illinois, showing his admission to the said hospital September 1921, and the history of his previous illness in September, 1920.

(c) A dispute having arisen herein as to the question of the beginning of the permanent and total disability of the deceased, petitioner has a plain, complete and adequate remedy at law by filing suit on said insurance contract and that accordingly mandamus is not the proper remedy.

Wherefore, having fully answered, defendant prays that the rule be discharged and the petition dismissed.

FRANK T. HINES,

Director of the United States Veterans' Bureau.

PEYTON GORDON,

United States Attorney.

LEO A. ROVER,

Assistant United States Attorney,

Attorneys for Defendant.

WM. WOLFF SMITH,

General Counsel United States Veterans' Bureau,

JOHN M. GEORGE,

Attorney U. S. Veterans' Bureau,

Of Counsel.

17 DISTRICT OF COLUMBIA, *To wit:*

I, Frank T. Hines, on oath depose and say that I am Director of the United States Veterans' Bureau, that I have read the foregoing and annexed return to rule and answer to petition by me subscribed and know the contents thereof; that the matters and things stated therein I verily believe to be true.

FRANK T. HINES.

Subscribed and sworn to before me this 27th day of January, A. D. 1927.

[NOTARIAL SEAL.]

MATILDA REDEKER,

Notary Public, D. C.

Demurrer to Answer.

Filed February 2, 1927.

* * * * *

Comes now the petitioner by her attorneys of record in said cause and demurs to the return of the respondent and the answer to the petition for a writ of mandamus in said cause, and for grounds of said demurrer states thus:

(1) That in and by the provisions and allegations of said answer the respondent has sought to justify his action by claiming the right to review, consider and change the rulings of a former Director of the Veterans' Bureau, while at the same time admitting that the said former Director was in fact the Director of the Bureau and did in fact do the things in the course of business within the provisions of the law as prescribing his duties, and without fraud.

18 (2) That the respondent in and by his answer undertakes to support his position in reversing, upsetting or changing the ruling of his predecessor in office on this insurance claim by alleging newly discovered evidence without in any wise setting forth the evidence which it is claimed was not before the former Director, nor that it was not in existence and available to the former Director.

(3) That the respondent undertakes to justify his act in overruling, reversing or changing the ruling of his predecessor in office on newly discovered evidence when in fact such newly discovered evidence as is set forth is not in itself sufficient to entitle the party at law to a new trial, and, therefore would not at law be sufficient to entitle the respondent to revise the action of his predecessor in office there being no fraud of any character alleged or claimed.

(4) That the respondent in and by said answer is attempting to justify his position in refusing to carry out the findings and rulings of his predecessor in office by alleging that his action in so doing was based upon newly discovered material evidence, whereas in fact the answer itself shows that all of the evidence which he now claims was newly discovered was known to the Government of the United States and available to his predecessor in office on November 8, 1921, and the action of his predecessor in office which he now seeks to overthrow and ignore was not taken until April 1922.

(5) And for other and sufficient reasons as shown by the face of the answer itself.

W. GWYNN GARDINER,
S. T.,
SOUTH TRIMBLE, JR.,
Attorneys for Petitioner.

19 To Hon. Peyton Gordon, United States Attorney;
Hon. Leo Rover, Assistant United States At-
torney, and G General Counsel Veterans' Bureau:

Take notice that the Demurrer in the above entitled cause this day filed will be for hearing before Mr. Chief Justice McCoy, on Friday next, February 4th, 1927, at 10 o'clock A. M., or as soon thereafter as counsel can be heard.

W. GWYNN GARDINER.

S. T.

SOUTH TRIMBLE, JR.

Notice accepted.

PEYTON GORDON,

LEO A. ROVER,

Attys. for Respondent.

Memorandum Opinion.

Filed May 11, 1927.

* * * * *

This is a petition for a writ of mandamus to compel the Director of the Veterans' Bureau to pay to petitioner the amounts claimed to be due her under a contract of War Risk Insurance.

The petitioner claims to be the beneficiary under the policy. She alleges that under a ruling of a previous Director of the Veterans' Bureau her husband who was insured received payments under the policy and that after his death the payments were continued for a while and then stopped because the present Director determined that the ruling of his predecessor was wrong on the law and on the facts and claimed further that newly discovered evi-
20 dence demonstrated that the ruling of his predecessor if adhered to would result in a fraud upon the United States.

Both parties have argued on the question of the power of the present Director to change the ruling as above stated the petitioner contending that there is no such power and that nothing remains to be done but the performance of a ministerial duty, that is to say, the duty to pay the installments provided for in the contract of insurance. The Director takes the opposite view. The Director contends fur-

ther that the case is one for trial before a jury and the court is of the opinion that such contention is sound.

Section 19 of the World War Veterans' Act was amended by the Act of March 4, 1925 (43 Stat. 1302) so as to read in part as follows:

“Sec. 19. In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled ‘An Act to provide for the bringing of suits against the Government of the United States,’ approved March 3, 1887 and section 10 thereof insofar as applicable. * * *”

The Act as so amended was passed upon in *Whitney v. United States*, 8 Fed. (2d) 476 (C. C. A. 9th Cir.) and *Hacker v. United States*, 16 Fed. (2d) 702 (C. C. A. 5th Cir.). In both those cases it was held that in case of disagreement between the Bureau and any person claiming under a contract of insurance the claim must be tried before a jury. The *Hacker Case* expressly disapproved 21 of a contrary ruling in *Allen v. United States*, 10 Fed. (2d) 807, made by a District Court in the same Circuit. In *Norris vs. Forbes*, 51 App. D. C. 248 (278 Fed. 331) the Court of Appeals ruled under the Act of May 20, 1918, Section 1 (40 Stat. 555) which provided that in the event of disagreements as to claims under contracts of insurance an action might be brought against the United States that mandamus would not lie to compel payment of a claim under a policy. The court said that the relator could not deny that he was a beneficiary for that was the basis on which he asked relief, and consequently that the statute applied and because it provided a remedy that remedy was exclusive. Relator seeks to distinguish that case from the one now being considered but the court is unable to distinguish it so far as concerns the question of law involved.

The rule to show cause is discharged and the petition dismissed on the ground above stated but not on the merits.

WALTER I. McCOY,
Chief Justice.

May --, 1927.

22 Supreme Court of the District of Columbia.

Friday, May 20th, 1927.

Session resumed pursuant to adjournment, Hon. Walter I. McCoy, Chief Justice, presiding.

* * * * *

This cause came on to be heard upon the petition, rule to show cause, answer to rule and petition and the demurrer to said answer and after the same is argued on behalf of the parties by their respective attorneys of record, it is ordered that said demurrer be, and the same is hereby overruled. Thereupon, petitioner elects to stand upon her demurrer and judgment is ordered. Wherefore, it is considered that the rule to show cause be, and the same is hereby discharged and the petition dismissed, and that respondent recover of petitioner his costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment, the petitioner by her attorneys of record, in open court, note an appeal to the Court of Appeals; whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars with the clerk, in lieu thereof.

23 *Assignments of Error.*

Filed June 1, 1927.

* * * * *

1. The Court committed error in discharging the Rule to Show Cause and dismissing the Petition for a Writ of Mandamus.

2. The Court committed error in holding that the Relator's rights could only be maintained as provided by Section 19 of the World War Veterans' Act of Congress as amended by the Act of Congress of March 4th, 1925, (43 Stat. 1302).

3. The Court committed error in holding that the Re-lator had a plain, adequate and complete remedy at law.

4. The Court committed error in holding that the present Director of the Veterans' Bureau could in the absence of fraud or newly discovered evidence overrule and set aside or ignore an award made under a war risk insurance contract based on a finding of facts made by his predecessor in office.

5. The Court committed error in holding that the payments of the installments by the present Director of the Veterans' Bureau under an award on an insurance contract made by his predecessor in office and not having been impeached was not a plain ministerial duty.

W. GWYNN GARDINER,
S. T.,
SOUTH TRIMBLE, JR.,
Attorneys for Petitioner.

24

Designation of Record.

Filed June 1, 1927.

* * * * *

To Frank Cunningham, Esq.,
Clerk Supreme Court of the District of Columbia.

You will please prepare the following as the record on appeal in the above entitled cause.

1. Petition for Writ of Mandamus.
2. Rule to Show Cause.
3. Return to Rule to Show Cause and Answer to Petition for Writ of Mandamus.
4. Demurrer to Answer.
5. Memo. of Mr. Chief Justice McCoy.
6. Order of the Court overruling Demurrer, discharging Rule to Show Cause and Dismissing Petition.
7. Noting of Appeal in Open Court and Fixing Bond.
8. Memo. Approving Bond and Filing of Bond.
9. Assignments of Error.
10. This Designation.

W. GWYNN GARDINER,
ST.,
SOUTH TRIMBLE, JR.,
Attorneys for Petitioner.

Service of this Designation of Record and Assignments of Error accepted this 1st day of June, A. D., 1927.

CHARLES B. MURRAY,
Chief Clerk U. S. Att'y's Office,
Attorney for Respondent.

25

Memorandum.

June 7, 1927.—Undertaking on appeal (costs) approved and filed.

26 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 72443 at Law, wherein United States of America *ex rel* Sadie Holmes Finley is Petitioner and General Frank T. Hines, Director of the Veterans' Bureau is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 27th day of October, 1927.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4668. U. S. of A. ex rel. Sadie Holmes Finley, appellant, vs. Frank T. Hines, Director, &c. Court of Appeals, District of Columbia. Filed Nov. 14, 1927. Henry W. Hodges, clerk.

